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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 00-39

## PETITION FOR RECONSIDERATION

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

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## SUMMARY

Given the state nationwide of the current DTV transition, Cordillera requests that the Commission reconsider the impact of certain decisions in its *Report and Order* on smaller market stations. To provide these broadcasters with the sufficient flexibility needed at this time, Cordillera urges the Commission to extend the construction deadline to May 1, 2003, for stations in markets 50-100 and to May 1, 2004, for those in markets above 100. To prevent permanent loss of service, the Commission also should continue to protect a DTV station's unreplicated analog service area after December 31, 2004. The Commission also should provide extended interference protection to maximized service areas and defer a permanent channel election until a later date. In these ways, the Commission will facilitate the implementation of digital television and not delay its ultimate success.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

|                            |   |                     |
|----------------------------|---|---------------------|
| In the Matter of           | ) |                     |
|                            | ) |                     |
| Review of the Commission's | ) |                     |
| Rules and Policies         | ) | MM Docket No. 00-39 |
| Affecting the Conversion   | ) |                     |
| To Digital Television      | ) |                     |
|                            | ) |                     |

To:    The Commission

**PETITION FOR RECONSIDERATION**

Cordillera Communications, Inc. ("Cordillera"), by its attorneys and pursuant to 47 C.F.R. § 1.429(a) (1999), hereby petitions the Federal Communications Commission for reconsideration of its *Report and Order* in the above captioned proceeding.<sup>1</sup>

**INTRODUCTION**

Cordillera owns through subsidiaries twelve commercial television stations licensed to communities located largely in the western United States. Cordillera wholeheartedly supports the Commission's efforts to facilitate the transition of the nation's television system from analog to digital technology. Cordillera stations are enthusiastically planning to commence digital operations and provide viewers with new digital service.

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<sup>1</sup> Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order and Further Notice of Proposed Rulemaking*, MM Docket No. 00-39 (rel. Jan. 19, 2001); 66 Fed. Reg. 9973 (Feb. 13, 2001) ("*Report and Order*"). This petition is timely filed within thirty days of the date of publication of the *Report and Order* in the *Federal Register*. See 47 C.F.R. §§ 1.429(d), 1.4(b) (1999).

In this spirit, Cordillera urges the Commission to reconsider certain aspects of the *Report and Order* that could stifle the development of DTV stations in smaller markets throughout the country. Specifically, Cordillera asks the Commission to adopt its proposal for extending the DTV construction deadline to May 1, 2003 for commercial stations in markets 50-100, and to May 1, 2004 for commercial stations in markets ranked above 100. The Commission also should reconsider its decision to eliminate interference protection for those DTV stations that do not replicate their allotted service areas by December 31, 2004. Instead, Cordillera urges the Commission to provide interference protection for unreplicated DTV service areas and extend interference protection for maximized service areas if broadcasters temporarily operate at reduced power.

**I. SMALL MARKET STATIONS WILL NEED ADDITIONAL TIME TO PLAN AND CONSTRUCT THEIR DTV FACILITIES.**

Cordillera is fully committed to rolling out DTV service and understands the importance of ensuring that the DTV transition is not delayed unnecessarily. For a variety of reasons largely beyond their control, however, many stations located in smaller Designated Market Areas (“DMAs”) will need additional time to plan and construct their DTV facilities. Congress’ intervening enactment of the Community Broadcasters Protection Act<sup>2</sup> delayed Commission processing of DTV construction permit applications, and many stations have yet to receive their DTV permits with less than fourteen months to the construction deadline. This, in turn, has made it difficult for broadcasters to schedule highly-demanded tower construction crews and coordinate the purchase of costly equipment. In addition, uncertainty has surrounded the DTV

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<sup>2</sup> Community Broadcasters Protection Act of 1999, § 5008 of Pub. L. No. 106-113, 113 Stat. 1501 (1999), Appendix I (*codified at* 47 U.S.C. § 336(f)).

transmission standard and reception capabilities since the time large market stations commenced service,<sup>3</sup> and digital compatibility between DTV receivers and cable programming delivery is not in place.<sup>4</sup> Purchases of DTV receivers in large markets lag even pessimistic expectations,<sup>5</sup> and the recent energy problems in California have rippled across the West.

Even under these conditions, the Commission has asked smaller market broadcasters to meet the initially established DTV construction schedule. Yet these small market stations are exactly the ones that generally can ill-afford to commence digital service in the midst of such uncertainty and flux. Accordingly, Cordillera proposes that the Commission adopt the following timetable for small-market stations to complete DTV construction, or beyond:

- For stations in DMAs ranked 50 to 100: May 1, 2003.
- For stations in DMAs ranked above 100: May 1, 2004.

Stations in DMAs 50-100 would have the same construction deadline as non-commercial stations, which would be more reasonable given that small market stations often are under the same, if not greater, financial constraints as non-commercial stations. In establishing the 2003 construction deadline for non-commercial stations, the Commission cited the special financial hardships faced by non-commercial stations in justifying the longer construction period.<sup>6</sup> Yet

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<sup>3</sup> Paige Albiniak, *8-VSB: Almost Just Good Enough; Industry Expected to Halt COFDM Tests; Broadcast Wisdom says 2002 DTV Conversion Deadline Has Become Unrealistic*; BROADCASTING & CABLE, Jan. 15, 2001, at 4.

<sup>4</sup> Doug Halonen, *Digital Television Derailed*, ELECTRONIC MEDIA, July 17, 2000.

<sup>5</sup> Despite continually falling prices, sales of digital receivers are at insignificant levels and the rate has been falling. Joel Brinkley, *Digital TV Era Still Remains Out of Reach*, N.Y. TIMES, Aug. 7, 2000, at C1.

<sup>6</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Fifth Report and Order*, MM Docket 87-268, 12 FCC Rcd 12809, ¶104 (1997) ("*Fifth Report & Order*").

these stations have access to public financial assistance for constructing their DTV stations,<sup>7</sup> while construction costs for some small market stations are thought to exceed the value of the station itself.<sup>8</sup>

An extension of the DTV construction deadline would provide these small market broadcasters with increased flexibility in structuring and implementing a sound business plan for delivering DTV to viewers. Small market stations also would enjoy greater leeway in scheduling the construction of DTV facilities, have more time to raise capital to invest in construction, and gain the practical opportunity to learn from the experiences of larger market broadcasters. In addition, an extended deadline would accommodate the effective construction period that is constrained by winter weather (a real handicap in the western states) and tower crew availability.

Although the Commission has stated that it will grant extensions of the DTV construction deadline on a case-by-case basis, these extensions likely will be only for one or two six-month periods (absent full Commission review).<sup>9</sup> By generally extending the construction deadlines, the Commission will ensure that its resources are not needlessly expended on processing extension requests.

The Commission long ago recognized that small market stations would need a staggered DTV construction schedule.<sup>10</sup> The Commission believed that small market broadcasters should benefit from the experience gained by larger-market broadcasters and be permitted to take

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<sup>7</sup> *E.g.*, federal funding is available under the Public Telecommunications Facilities Program (“PTFP”), administered by the National Telecommunications and Information Administration (“NTIA”) under the Department of Commerce. *See* 47 U.S.C. §§ 390, *et seq.*

<sup>8</sup> Andrew Bowser, *The DTV Waiting Game*, BROADCASTING & CABLE, Sept. 4, 2000, at 42.

<sup>9</sup> Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, 13 FCC Rcd 6860, ¶ 56 (1998); *Fifth Report & Order*, 12 FCC Rcd 12809 at ¶ 77.

<sup>10</sup> *Id.* at ¶ 78.

advantage of lower equipment and implementation costs and avoid early transition problems.<sup>11</sup>

Cordillera respectfully suggests that, at this time, the larger-market DTV stations have not experienced as smooth a transition as the Commission (or anyone else, for that matter) may have expected. The DTV transition has not yet progressed to a level where the small market stations can benefit significantly from the anticipated decrease in equipment and implementation costs or from the experience of large market stations. Accordingly, an extension of the construction period is consistent with the Commission's initial, well-reasoned implementation policies.

An extension also is reasonable because small market broadcasters have very different business models than larger market stations and do not provide service to viewers in a densely populated, centrally located geographic area. In addition, unlike their large market counterparts, smaller-market stations often rely on translators and low power television stations to reach viewers over a widely-dispersed area. Providing DTV service to serve a small (in terms of population) yet huge (in terms of geography) market necessarily involves far different business planning than is required for a large market television station. Additional time is necessary so that these broadcasters have the ability to implement a successful business plan based upon the real and practical DTV experiences of the larger market stations and the unique difficulties faced by small-market broadcasters.

Extending the deadline will not threaten a small market's ability to reach the 85% DTV market penetration threshold that would trigger the close of the DTV construction period.<sup>12</sup> The 85% threshold will not be measured nationally but is a market by market determination. Stations

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<sup>11</sup> *Id.*

<sup>12</sup> The DTV transition is scheduled to end in 2006, but will be extended in markets where general DTV market penetration is less than 85%. 47 U.S.C. § 309(j)(14)(B).



in the top markets will continue to contribute to the 85% threshold without interruption, permitting them to return their spectrum independent of DTV success in the smaller markets. For stations in smaller markets, meeting the existing 2002 construction deadline will not meaningfully advance market penetration. Instead, it will simply impose initial hardships on stations that, in the long run, likely will result in delaying the DTV transition for those markets.

Although Cordillera agrees in principle with the Commission that the implementation of DTV should occur as rapidly as possible, Cordillera also believes that an accelerated conversion is tempered by the daunting build-out requirements faced by small market broadcasters. Extending the DTV construction deadline for this brief period or possibly beyond would strike an appropriate balance between the need for a rapid roll-out and the importance of providing small market broadcasters with the opportunity to develop sound and viable plans for providing viewers with DTV service. In the end, this approach would contribute to hastening the close of the DTV transition period instead of extending it.

## **II. THE COMMISSION MUST CULTIVATE THE DEVELOPMENT OF SMALL MARKET DTV STATIONS BY PROTECTING THEIR ALLOTTED AND MAXIMIZED SERVICE AREAS.**

### **A. The Commission Must Continue To Protect Stations' Unreplicated Analog Service Areas After December 31, 2004.**

Cordillera respectfully urges the Commission to reconsider its decision not to protect from interference the unreplicated service areas of DTV stations that do not replicate their April 1997 NTSC Grade B service area by December 31, 2004.<sup>13</sup> To eliminate interference protection at such an early date could result in unintended, long-term detrimental effects on the viability of small market DTV stations and interfere with their successful implementation and build-out.

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<sup>13</sup> *Report and Order* at ¶ 22.

The Commission adopted its replication incentive “to assure that viewers do not lose service” and “to speed the [DTV] transition.”<sup>14</sup> These goals, however, will not be served by imposing this implicit 2004 replication requirement. Already required to serve their communities of license, broadcasters must cover the great majority of their centrally located analog service population with digital signals. Accordingly, in all but a few markets, the absence of replication would not delay broadcasters from reaching 85% market penetration and, thereby, the close of the DTV transition period.<sup>15</sup>

Indeed, as the Commission itself notes in its *Report and Order*, an explicit replication requirement will be harmful to the DTV transition:

[W]e will not require such replication because we want to give broadcasters a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers. Some broadcast commenters have taken advantage of these measures, which we suggested in the *Fifth Report and Order*, and it would be unfair to them and might delay construction to require them to change these plans, if necessary, to achieve full replication.<sup>16</sup>

Cordillera agrees with the Commission that it would be harmful to the overall implementation of digital television to impose a replication requirement on broadcasters at this time. A decision to replicate existing service requires experience with and analysis of actual DTV operations, and many broadcasters simply will not be able to collect all of the data they need by the proposed December 31, 2004, deadline. Moreover, with the recent addition of primary protection offered

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<sup>14</sup> *Id.*

<sup>15</sup> Meeting the scheduled end of the DTV transition period in 2006 appears unlikely. The Congressional Budget Office frankly has concluded that “[i]t now appears likely that the [DTV] transition will extend beyond [the scheduled] 2006 in most markets, with its ultimate end date uncertain.” *Completing the Transition to Digital Television*, Congressional Budget Office, Congress of the United States (Sept. 1999). See also 47 U.S.C. § 309(j)(14) (2000).

<sup>16</sup> *Report and Order* at ¶ 21.

to low power Class A stations capable of shoe-horning new service,<sup>17</sup> the cost of removing replication protection is very real.

As the Commission itself states, “most DTV licensees will replicate their NTSC service areas, and we have decided that an express requirement is unnecessary in this regard. DTV licensees have incentives to replicate to serve their established viewers.”<sup>18</sup> The imposition of a premature, regulatory incentive for replication, however, is contrary to this recognition. As the December 31, 2004, replication deadline approaches, a station that does not replicate its analog signal will sacrifice protection of its DTV coverage area, a consequence from which it may never recover as competitors seize the opportunity to encroach on the station’s coverage area. Stations that cannot serve their entire area by December 31, 2004, would be stunted in the early stages of development as their coverage area could be permanently reduced by anyone who wishes to stake a claim. Accordingly, in a very real sense, some viewers would lose access to the broadcast service upon which they rely – the same loss of service the Commission seeks to avoid in adopting the replication incentive.

It is premature for the Commission to impose a regulatory replication incentive while the DTV transition is still in its early stages and there is no evidence of a market failure or a causal delay in implementing digital service. The removal of interference protection of unreplicated coverage areas at this time may result in unintended detrimental effects on the development of DTV stations. The Commission would better serve its goals of a successful DTV transition by

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<sup>17</sup> See Establishment of a Class A Television Service, *Report and Order*, 15 FCC Rcd 6355, ¶¶ 67-75 (2000).

<sup>18</sup> *Report and Order* at ¶ 23.

continuing to protect DTV stations' unreplicated service areas and reconsider the matter in its next periodic review.

**B. The Commission Should Protect the Maximized Service Area of Stations Operating at Lower Power.**

Protection of a station's maximized service area also is critical to the successful development of small market DTV stations. Cordillera urges the Commission to extend interference protection to the maximized service areas of those stations that temporarily operate at a lower power and serve a reduced area.

The importance of a station's ability to maximize cannot be overstated. The Commission permits DTV stations "to apply to maximize or increase their service areas by operating with additional power or higher antennas than specified."<sup>19</sup> The Commission wanted to ensure, *inter alia*, that stations could maximize their digital signals and "provide DTV service competitively with their respective markets."<sup>20</sup> The Commission was particularly concerned that it not artificially limit the size of DTV service areas as a legacy of analog UHF constraints. Congress found this ability so important that it established explicit measures to ensure the protection of maximized areas against new Class A service.<sup>21</sup> However, unlike for allotted service areas, the Commission does not provide a mechanism whereby a DTV station that aspires to serve a maximized area in the future is assured that the maximized coverage area will be available. As a

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<sup>19</sup> Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶ 31 (1997) ("*Sixth Report and Order*"). See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders*, 14 FCC Rcd 1348, ¶ 49 (1998); Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order*, 13 FCC Rcd 7418, ¶¶ 80-84 (1998).

<sup>20</sup> *Sixth Report and Order* at ¶ 30.

<sup>21</sup> 47 U.S.C. § 336(f)(1)(D), (7)(A)(ii)(IV).

result, under the Commission's current rules, a DTV station must immediately serve the maximized coverage area if it desires to ensure protection.

For the reasons previously described, small market stations initially would offer such maximized DTV service to their detriment. Cordillera proposes that the Commission may resolve this problem by authorizing stations to operate with and protect maximized service areas but grant stations STAs to operate at reduced power for a temporary period if the station cannot operate with maximized facilities immediately. In this manner, the Commission will provide stations with the assurance necessary that the maximized service area will be protected from interference so that stations may then reliably plan their future development. By granting STAs to stations that plan to serve maximized service areas in the future, the Commission would enable these stations to begin operations more quickly and also provide stations with the incentive to maximize and offer service to new viewers.

### **III. THE COMMISSION SHOULD GIVE BROADCASTERS ADDITIONAL TIME TO SELECT A PERMANENT DTV CHANNEL.**

Cordillera urges the Commission to reconsider its decision to require commercial broadcasters that have both their NTSC and DTV channels in the core to elect their post-transition digital channel by December 31, 2003, a date five months earlier than the Commission proposed in its *Notice*.<sup>22</sup> Cordillera understands the importance of requiring broadcasters to select their permanent DTV channels by a date certain, but it believes that December 31, 2003, is far too soon for many broadcast stations to analyze fully which paired channel offers superior prospects for digital service.

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<sup>22</sup> Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Notice of Proposed Rule Making*, MM Docket No. 00-39, FCC 00-83, at ¶ 38 (rel. Mar. 8, 2000) ("*Notice*").

The Commission based its decision to accelerate the deadline on the belief that:

the transition process will be sufficiently along by December 31, 2003, to allow commercial broadcasters to make an informed channel selection decision. An earlier election decision will provide commercial broadcasters with more time in which to construct the replication capability prior to our December 31, 2004, “use or lose” date, also being adopted herein. Additionally, the deadline will allow almost a year-and-a-half of DTV operation for stations before any station has to make a channel election.<sup>23</sup>

The Commission’s belief is based upon the questionable assumption that commercial broadcasters will have had sufficient time to make an informed channel selection by December 31, 2003. As discussed above, small market broadcasters will need additional time to complete construction of DTV facilities and implement successful business plans. While it is important that a broadcaster select a permanent channel by a specific deadline, it is equally if not more important that the decision be informed and based on sufficient experience with DTV technology and operations. Stations should be given full opportunity to collect DTV field data and to evaluate completely their DTV service over a sufficient period of time. This will not be possible for many broadcasters unless the Commission postpones the DTV channel selection deadline past December 31, 2003. Cordillera recommends that the Commission revisit this question in the subsequent periodic review.

## CONCLUSION

In light of the foregoing, Cordillera urges the Commission to reconsider certain elements of its *Report and Order* that affect small-market broadcasters. By continuing to protect stations’ unreplicated service areas after December 31, 2004, and committing to grant STAs for stations with maximized service areas to operate at reduced power, the Commission would enable small

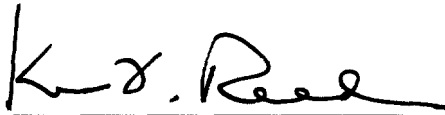
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<sup>23</sup> *Report and Order* at ¶ 14.

market stations to realize their full DTV potential. By extending the construction deadline to May 1, 2003, for stations in markets 50 to 100 and May 1, 2004, for stations in markets above 100 (or beyond), the Commission would provide small market stations with the increased flexibility that they need to complete the DTV transition. By extending the deadline for election of a permanent DTV channel, the Commission would enable broadcasters to make an informed decision based on sufficient experience with DTV technology and operations. By reconsidering these items, the Commission can ensure that the DTV transition for television stations in smaller markets will enhance broadcast service instead of constraining it.

Respectfully submitted,

CORDILLERA COMMUNICATIONS, INC.

By: 

Kevin F. Reed  
Scott S. Patrick  
Nam E. Kim

Its Attorneys

DOW, LOHNES & ALBERTSON, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(202) 776-2000

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